STATEMENT OF SENATOR MARY LANDRIEU

Implementation of the Biggert-Waters Flood Insurance Act of 2012: One Year After Enactment

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Subcommittee on Economic Policy
Committee on Banking, Housing, and Urban Affairs

Opening

Thank you, Chairman Merkley and Ranking Member Heller, for inviting me to testify before the committee about this critically important issue.

Twelve days from now, FEMA will begin the process of increasing insurance rates on hundreds of thousands of homeowners and small business owners across the United States as a result of disastrous legislation that Congress passed without even pausing to consider the potential impact that skyrocketing rates might have on families, small businesses, home sales, property values, local economies, or continued participation in the program.

Both Biggert-Waters and the companion Flood Insurance Reform and Modernization Act that cleared the Senate Banking Committee two years ago were built backwards and upside down. They authorized immediate rate increases on homeowners and businesses that played by the rules and did everything asked of them before they even began to study the impacts these rate increases would have on affordability.

When Biggert-Waters passed Congress last summer, I said we would be back here in a year having this very discussion, and I thank the Chairman and Ranking Member for providing a forum for this important discussion. Any meaningful, comprehensive reform legislation must go through this committee, and I am encouraged by your willingness to have this debate.

The recent flooding in Colorado, which has claimed the lives of at least 8 people and damaged more than 19,000 homes, is a stark reminder that flood risk throughout the United States is prevalent, costly, and lethal. It is not confined to the Gulf Coast or any coast for that matter; we find it in every state of the union.

Affordability

17.4 million households live in Special Flood Hazard Areas (SFHA) where flood insurance is mandatory. According to HUD, 41 percent of those households are low-to-median income and could face major difficulties affording rate increases. Those who are already in the program may be forced out, and families considering a first-time home purchase may suddenly find themselves priced out of the market.

Home Sale Trigger

One of the most problematic provisions in Biggert-Waters is the requirement under Section 205 that any property purchased after July 6, 2012 will immediately lose its entire subsidy upon the act of sale, penalizing new homeowners who had no way of knowing their premiums would double or triple the following year. This will impact over half-a-million properties in the coming year, shrink the value of many of my constituents' homes, and bring the real estate market to its knees in communities along our nation's coasts and waterways. 25% annual rate increases are tough enough; forcing homebuyers to absorb 100% of the increase all at once is draconian. The National Association of Homebuilders estimates that the home sale trigger will reduce annual real estate sales in the United States by 1.9 million homes.

Two of my constituents, Penny and David Bochicchio (Bo-Kee-Kee-O), bought a home in Baton Rouge on August 23rd and were told they would maintain the seller's flood insurance policy that cost $650 per year. One week later, on August 30th, they received a letter notifying them that their annual premium would increase almost 400% to $2,500. They are now struggling to find the additional $1,900 they need before their policy expires in the beginning of October.

Affordability Amendments

When Congressman Ros Lehtinen *(Roz Let-Tin- In)* offered an amendment on July 12, 2011 to prevent the cap on annual rate increases from doubling under Biggert-Waters from 10 to 20% under Biggert-Waters, the House killed his amendment on the floor by a voice vote. When I filed an amendment on the Senate floor authorizing the NFIP to provide means-tested vouchers to households unable to afford rate increases, I was denied a vote.

Affordability Study

The only nod to the affordability challenge in the entire Biggert-Waters bill was a requirement for a study that FEMA was tasked to complete over a 9-month period for $750,000 and deliver to the Congress in April of this year. FEMA did not even sign a contract to begin the study until last month, four months after it was due, and the agency has reported that it will take another 2 years and two-to-three times as much money to finish.

I'm disappointed in FEMA for delaying so long in even beginning this process, but I'm even more disappointed in Congress for passing legislation that requires rate increases for thousands of households before we have received basic information and conducted any kind of analysis about their impact on affordability. To say that we put the cart before the horse would be a gross understatement. Implementing rate increases before we understand their economic consequences is just plain stupid.

Forcing Policyholders to Pay for the Corps of Engineers' Mistake

The catastrophic flood losses that occurred in 2005 didn't happen because of subsidized insurance rates. But they *were* the result of irresponsible construction, not by the citizens of Louisiana, but by the federal government itself, specifically the Corps of Engineers according to subsequent reports by the Independent Levee Investigation Team and other government bodies. Multiple federal levee failures in the New Orleans area caused $17 billion in losses to the flood insurance program. Recognizing this special circumstance, the flood insurance reform legislation that passed the Senate in 2008 included a provision to cancel the program's debt to the U.S. Treasury. But the legislation that emerged in 2011 no longer contained that provision. Instead, Congress decided to enact a law that forces policyholders across the country to pay for the Corps of Engineers' mistake. The failure of both Biggert-Waters and the Senate Banking Committee's bill to cancel the program's outstanding debt to the Treasury was unfair to both the policyholders and the program.

The Truth about Program Sustainability

Many in Congress were led to believe that the flood insurance program was unsustainable, that it consistently paid out more in losses than it collected in premiums, and that the only way to balance the ledger was to eliminate subsidies and raise rates. That simply isn't the case.

1) *Historical Gains & Losses* - During 3 of the past 5 years, the program has actually collected more in premium revenue than it paid out in losses. In fact, the program has tabulated an annual surplus 18 times during the 42-year period for which we have data. Over the 26-year period between the time that the federal government took over the program in 1978 and the catastrophic losses in 2004 when Florida was struck by four major hurricanes, the program collected $10.2 billion in premiums and paid out $10.7 billion in claims, resulting in a modest deficit of just $500 million or $19 million per year on average.
2) *The Price of Noncompliance* - I also think members of Congress would be surprised to learn that 40% of all properties which are required to maintain flood insurance do not have an active policy. This violation of the law costs the program hundreds of millions in lost revenue. Stricter penalties under Biggert-Waters for lenders who fail to enforce mandatory purchase requirements will help to address this, but it is difficult to justify exorbitant rate increases for people who are participating in the program and playing by the rules when millions of property owners are bucking their legal obligation to pay into the program.
3) *Allocation of Program Funds* - I also think most members of Congress and the general public would be shocked to learn that only 44% of the money collected by the program is used to cover expected flood losses *in a given year*. In fact, when taken together, the program spends more money paying the insurance companies and agents who administer the program but don't incur any risk and servicing the debt created by the Corps of Engineers, than it spends on annual flood losses.

The fiscal structure of the flood insurance program is definitely broken, but it isn't because of subsidies alone. Taken in combination, these facts paint a very different picture of the National Flood Insurance Program than the one that prevailed during the debate last Congress when Biggert-Waters was presented to us.

Breakdown of the Legislative Process

The historical track record of the flood insurance program, the large volume of noncompliant properties, and the massive expenditures on administrative costs, debt, and interest were all a surprise to me when I first learned of them. The far-reaching, ill-advised, negative economic consequences of Biggert-Waters however are not. I spoke in opposition to this legislation on the floor of the Senate before it was rolled into a larger transportation package and railroaded through the chamber without any opportunity for amendments. I stated at the time that I believed Congress would find itself reconsidering the law this year, and here we are, doing exactly that.

My staff sat down with Banking Committee staff before legislation was ever marked up in this committee to convey my concerns about affordability. I wrote to the Senate leadership underscoring the need to address the issue when the bill came to the floor. And I filed an amendment to provide means-tested vouchers funded by NFIP income to low-income property owners unable to afford the rate increases. Despite engaging the Banking Committee and Senate leadership on the issue of affordability for more than a year though, I was ultimately denied any opportunity to amend the bill on the floor, and because I am not a member of this committee, I was effectively locked out of the legislative process.

Need to Reform Biggert-Waters

I believe these facts warrant a new debate in this committee and throughout Congress on flood insurance reform. We cannot afford to wait another four years for the current authorization to expire before we address these issues. By then, this flawed piece of legislation will have driven thousands of people out of the program entirely, sucked millions of dollars in value out of their homes, and caused irreparable damage to real estate markets and regional economies throughout the nation.

Landrieu Legislation

The Louisiana Congressional delegation is united its effort to prevent skyrocketing flood insurance premiums from decimating our economy. The House of Representatives passed an amendment to the Homeland Security Appropriations bill for Fiscal Year 2014 that prohibits FEMA from implementing Section 207 of Biggert-Waters. Section 207 requires FEMA to eliminate subsidies for "grandfathered properties" that were built to code but subsequently given a higher risk rating on a new flood map. I included an identical provision in the Homeland Security spending bill that I authored as Chairman of the Subcommittee with jurisdiction over the Department's annual budget, and I sent a letter along with Senator Vitter and other members of our delegation last week, calling on the leadership of the House and Senate to include that provision in the long-term Continuing Resolution or omnibus spending package that funds the government through the end of the current fiscal year. This is a band-aid that will help stop some of the bleeding, but the system is still incredibly sick and we need a cure.

I also introduced the Strengthen, Modernize, and Reform the National Flood Insurance Program Act, or the SMART NFIP Act on May 21st of this year, which is cosponsored by Senator Schumer and Senator Gillibrand. That legislation would postpone rate increases under Section 205 and 207 of Biggert-Waters until 6 months after the Congressionally-mandated affordability report has been received, and it would eliminate the home sale trigger that currently results in the complete loss of a subsidy. It also requires FEMA to study the viability of offering community-based policies under the program, provides the agency with additional flexibility to finance the affordability study, and establishes criteria and construction standards for the restoration of critical facilities in V-Zones that are damaged during a disaster.

"Without Levees" & Scientific Resolution Panels

Biggert-Waters isn't all bad. I support the creation of a reserve fund and increased penalties for non-compliance by lenders, and the legislation also codifies two important reforms that I pushed FEMA to make. The first of these is the Levee Analysis Mapping Procedures (LAMP) that provide credit on flood maps for levees which may not meet the 100-year standard for FEMA accreditation but which still provide substantial flood protection and reflect significant local investment in mitigation. The second of these is the development of Scientific Resolution Panels (SRPs) to objectively settle disputes about flood map accuracy between FEMA and local communities through binding arbitration.

FEMA or Congress – Who's to Blame?

FEMA is responsible for producing accurate flood maps, giving communities full and appropriate credit for their levees and flood control structures, and reigning in unnecessary administrative costs to the program. I intend to hold this administration and any other administration accountable for those responsibilities. But the decision to raise rates on policyholders without due consideration for affordability, program participation, home values, or real estate sales was not the administration's. That decision originated and passed here in Congress.

The title of this hearing references the "implementation" of Biggert-Waters. The question before us is much larger than that however. I would ask the members of this committee to fundamentally reconsider the law itself. Beating up on FEMA isn't terribly difficult in Louisiana, and it doesn't require a lot of courage to do. But it won't provide the ratepayers who I represent with permanent relief either. In order to accomplish that on a meaningful and long-term basis, *Congress* needs to admit that it passed a bill with incomplete information about the source of this program's fiscal problems and without a clear understanding of the legislation's impact on affordability. And we will need to rewrite portions of the law itself.

Michael Hecht Quote

I would like to read a statement that was made last week by the President of Greater New Orleans Inc., a regional business organization in Louisiana, which I believe conveys the sentiment of thousands of people who I represent that are facing steep rate increases in the midst of so many unanswered questions and misconceptions about this program's underlying problems.

"It is irresponsible to introduce drastic reforms that will potentially devastate hundreds of thousands of American home- and business-owners, before basic questions about forgone revenues and high costs are answered. To proceed otherwise, destroying the wealth of innocent Americans - who have done exactly as the government has told them, maintained insurance and often never flooded - is both economically unwise and morally unjust."

Ratepayers & Participating NFIP Communities Are Not the Bad Guys

The communities who are affected most severely by this law have adopted land use restrictions and building codes to reduce flood losses and ensure safe and sustainable development. And the people whom this law hurts the most are responsible property owners who made the decision to buy insurance instead of relying on federal disaster assistance paid for by taxpayers. These communities, households, and businesses have played by the rules, built to code, purchased and maintained insurance, and acted responsibly. And they deserve better. We should pursue all avenues to delay these rate increases. The administration should take whatever action it can, and Congress, which created this problem, should enact a permanent and thoughtful solution to the serious challenge of affordability. This bill was put together upside down. We need to tear it down and put it back together—correctly.

Closing

In closing, I will continue to call upon FEMA to –

1) use the very best science available to develop accurate flood maps
2) improve its communications with local officials and policyholders
3) expand the levee analysis pilot project and give communities full credit for their flood control investments
4) take a long, hard look at the flood insurance program's administrative costs and look for efficiencies that can result in program savings that we can then pass on to ratepayers

And I am calling on Congress to enact legislation that delays rate increases on certain grandfathered and subsidized properties until we have better information about the impacts of those increases on affordability, at both the household and the community level. Once we have that information, I would ask this committee to revisit the rate increases established under Biggert-Waters, and ensure that we don't saddle homeowners and small businesses throughout the nation with exorbitant rate increases that cause devastating economic consequences by unnecessarily pricing them out of the program, their homes, or the real estate market altogether.

Thank you.